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OFFICE OF PETITIONS

In re Application of	:	
Marc R. Hammerman et al.	:	
Application No. 09/472,662	:	DECISION ON RENEWED PETITION
Filed: December 27, 1999	:	UNDER 37 C.F.R. §1.181(A)
Attorney Docket Number: A-	:	
68752-1/RF	:	
Title: COMPOSITION AND METHOD	:	
FOR IMPROVING FUNCTION OF	:	
EMBRYONIC KIDNEY TRANSPLANTS	:	

This is a decision on the renewed petition under 37 C.F.R. §1.181(a) to withdraw the holding of abandonment, filed on September 25, 2006.

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed June 5, 2001, which set a shortened statutory period for reply of three months. A response was received on October 9, 2001, bearing a certificate of mailing dated October 4, 2001, and filed in conjunction with a one-month extension of time. The fourth page of the response was not included with the submission, and consequently, a notice was sent on January 2, 2002, which set a one-month period for response. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on February 3, 2002. A notice of abandonment was mailed on December 16, 2005.

PROCEDURAL HISTORY

The original petition was filed on March 27, 2006, and was dismissed via the mailing of a decision on July 24, 2006.

RELEVANT PORTIONS OF THE C.F.R.

37 C.F.R. §1.8(b) sets forth, *in toto*:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

37 C.F.R. §1.181(f) sets forth, *in toto*:

The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

ANALYSIS

In the decision on the original petition, it was indicated that 37 C.F.R. §1.181(f) sets forth that any petition submitted under this portion of the C.F.R. that is not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely. The original petition was submitted over two months after the mailing of the notice of abandonment. It does not appear that Petitioner has addressed this point on renewed petition.

In the original petition, Petitioner confirmed the receipt of the notice of January 2, 2002, and asserted that "Applicant

resubmitted the Response on January 14, 2002 via Facsimile Transmission¹," thereby informing the Office of the previous transmission of the correspondence. However, the original petition failed to contain a copy of this transmission.

With this renewed petition, Petitioner has supplied an additional copy of this previously transmitted correspondence and certificate.

As such, Petitioner has complied with 37 C.F.R. §1.8(b)(1) and (2).

Petitioner has not complied with 37 C.F.R. §1.8(b)(3), in that it does not appear that Petitioner has firsthand knowledge of the previous transmission. The original petition was submitted by one Richard Trecartin, and the renewed petition was submitted by one Jeffery Bernhardt. The previous transmission contains a certificate of facsimile transmission which was executed by one Wendy Wilson, and a cover letter which was signed by one Renee Kosslak, and it does not appear that a statement from either of these two individuals was provided with this renewed petition.

Pursuant to the discussion above, the renewed petition under 37 C.F.R. §1.181 must be **DISMISSED**.

CONCLUSION

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Second Renewed Petition Under 37 C.F.R. 1.181." This is not a final agency action within the meaning of 5 U.S.C 704.

Alternatively, Petitioner may wish to consider filing a petition under 37 C.F.R. §§1.137(a) and/or (b).

Any subsequent petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail², hand-delivery³, or facsimile⁴.

1 Original petition, page 2.

2 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

3 Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

4 (571) 273-8300- please note this is a central facsimile number.

The change of correspondence address, submitted on August 16, 2006, has been entered and made of record.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

A handwritten signature in black ink, appearing to read "Paul Shanowski", with a stylized flourish at the end.

Paul Shanowski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office